

**IN THE COURT OF APPEALS**  
**FIRST APPELLATE DISTRICT OF OHIO**  
**HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-090370
	:	TRIAL NO. B-0805641
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
JAMAR DODDS,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Jamar Dodds appeals his convictions for murder with a specification and for having a weapon while under a disability. We conclude that his assignments of error do not have merit, so we affirm the judgment of the trial court.

Dodds was indicted for murder, two counts of felonious assault, and one count of having a weapon while under a disability. The case was tried before a jury. During the trial, the state presented testimony that on the night of July 13, 2008, Chamonte Lewis and other men were playing a dice game on Irving Street in the Avondale neighborhood of Cincinnati. According to witnesses' testimony, Lewis became angry at some point and left the game. He returned with a gun, which he pointed at people and shot in the air. Lisa Griffin, who lived on Irving Street, testified that she had seen Lewis shooting the gun in the air. At trial, she testified that she also had heard someone say that he was going "to take [Lewis] out." Although she testified at trial that she did not know who had made the statement, she acknowledged that, in her testimony before the grand jury, she had identified

---

<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Dodds as the speaker. Griffin also testified that she had seen a “gun print” under Dodds’s shirt that night. Later that night, Griffin heard gunshots around the side of her house, and she saw the shoes of the person who had been shot. That person was later identified as Lewis. Although she acknowledged that she had testified to the grand jury that she had seen a man with braids running from the scene, at trial Griffin denied having seen anyone leaving the scene. Griffin stated that she had not seen Dodds shoot Lewis.

Lemara Higgins testified that she had been on Irving Street on the night of July 13. She stated that she had seen Lewis hold a gun to the neck of man who was nicknamed Rodney B. She testified that she had seen Dodds go around the side of a building with something in his hand, and that, shortly afterward, she had heard gunshots. After the gunshots, she heard someone knocking on a door nearby. She testified that the mother of Dodds’s child lived in the area where she had heard knocking. Higgins also stated that, after the shooting, she had heard the cellular phone belonging to a man nicknamed Mike-Mike ringing. According to Higgins, the cellular phone had its speakerphone on, so she was able to hear the person, who she said was Dodds, state, “I had to out that n\*\*\*\*\*.”

Derrick Williams testified that after Lewis had been shooting the gun in the air, Williams was talking to Dodds. According to Williams, when Williams told Dodds that he was tired of the shooting in the neighborhood, Dodds had said, “[I]f [Lewis] come [sic] back up here, I’m going to do something about it.” Williams testified that Dodds had had a silver gun in his hand.

At the conclusion of the trial, the jury found Dodds guilty of murder with the accompanying specification, two counts of felonious assault, and having a weapon while under a disability. The trial court merged the felonious-assault counts with the murder and merged the specifications. It sentenced Dodds to 15 years to life for murder, to three years for the accompanying specification, and to five years for

having a weapon while under a disability. The sentences were consecutive for an aggregate term of 23 years to life.

In his first assignment of error, Dodds asserts that the trial court erred when it denied his motion for the appointment of new counsel. A defendant is entitled to the appointment of new counsel “only upon a showing of good cause, such as a conflict of interest, a complete breakdown in communication, or an irreconcilable conflict which leads to an apparently unjust result.”<sup>2</sup> We review the trial court’s denial of Dodds’s request for an abuse of discretion.

Dodds moved for the appointment of new counsel because he was unhappy that his counsel had not filed motions that Dodds had requested. Upon questioning by the trial court, Dodds stated that he had wanted his attorney to file a motion to suppress his statement to police officers because he had not been aware that the officers were recording his statement. Dodds’s counsel told the court that he did not think a motion to suppress would be successful because Dodds had signed a rights waiver. Further, according to counsel, Dodds had not admitted anything against his interest in the statement. After explaining to Dodds that a motion to suppress would not have likely succeeded, the trial court asked if Dodds had anything else he wanted to discuss about his counsel’s performance. Dodds did not. We conclude that the trial court did not abuse its discretion in refusing to appoint new counsel. The first assignment of error is overruled.

In the second assignment of error, Dodds asserts that the trial court erred by admitting other-acts testimony. Dodds contends that the trial court should not have allowed Higgins to testify that she had bought marijuana from Dodds on the night of the shooting. Dodds did not object to the testimony, so he has waived all but plain error.<sup>3</sup> Plain error will not be found “unless, but for the error, the outcome \* \* \* would have been otherwise.”<sup>4</sup>

---

<sup>2</sup> *State v. Edsall* (1996), 113 Ohio App.3d 337, 339, 680 N.E.2d 1256.

<sup>3</sup> See Crim.R. 52(B).

<sup>4</sup> *State v. Long* (1978), 53 Ohio St.2d 91, 372 N.E.2d 804, paragraph two of the syllabus.

There was no plain error here. It appears from the record that Dodds's counsel asked Higgins questions about Dodds's alleged drug dealing to allude to the potential for bad blood between Dodds and Higgins's boyfriend, who also sold drugs. Further, Dodds stipulated to a prior conviction for trafficking. Given this stipulation and counsel's strategy, we are unable to conclude that the result of the trial would have been different had Higgins not been permitted to testify about having bought marijuana from Dodds. The second assignment of error is overruled.

The third assignment of error is that the trial court erred in allowing inadmissible hearsay. Dodds argues that Detective Jenny Luke was improperly permitted to testify about statements that Griffin had made to her a few days after the shooting. He also contends that Higgins should not have been permitted to testify that she "guessed" that it was Dodds's voice that she had heard on Mike-Mike's phone. Dodds did not object to any of the testimony about which he now complains, so we are limited to a plain-error review.

The hearsay that was admitted through Luke's testimony did not give rise to plain error. The testimony only repeated what had been introduced through Griffin's testimony. We are not convinced that the result of the trial would have been different had Luke not been permitted to relate the statements that had been made by Griffin. Nor are we convinced that permitting Griffin to state that she "guessed" the voice on the cell phone was Dodds's was plain error. At another point in her testimony, Griffin clearly stated that the voice was Dodds's. The third assignment of error is overruled.

Dodds's fourth assignment of error is that he was deprived of a fair trial due to prosecutorial misconduct. Dodds contends that, during closing argument, the assistant prosecutor improperly stated that three people had seen Dodds, a convicted drug dealer, with a gun in his hand and that Dodds had "terrorized" the neighborhood in the past. We review the assistant prosecutor's conduct to determine whether it was improper, and if so, whether it "prejudicially affected substantial

rights of the defendant.”<sup>5</sup> Because Dodds did not object to the statements, our review is limited to a determination of whether plain error occurred.

The assistant prosecutor’s statement that three people had seen Dodds with a gun was a misstatement. Only one witness stated that he had seen a gun in Dodds’s hand. Griffin saw an outline of a gun under Dodds’s shirt, and Higgins saw something in Dodds’s hand. We conclude that the statement, while inaccurate, did not rise to the level of plain error. Further, the assistant prosecutor’s statement that Dodds had terrorized the neighborhood did not amount to plain error. The fourth assignment of error is overruled.

In his fifth assignment of error, Dodds asserts that he was deprived of the effective assistance of counsel. To prevail on this assignment of error, Dodds must demonstrate that his counsel’s performance was deficient and that, absent his counsel’s errors, the result of the trial would have been different.<sup>6</sup> Our review of counsel’s performance must be “highly deferential.”<sup>7</sup>

Dodds claims that his counsel was ineffective for failing to object to prejudicial other-acts testimony, hearsay evidence, and improper statements made by the assistant prosecutor. Having reviewed the entire record, we are unable to conclude that had counsel made the objections the result of the trial would have been different. As we have discussed earlier, it appears that trial counsel attempted to use Higgins’s statements about Dodds’s alleged drug dealing to establish that Higgins was biased against Dodds. The hearsay evidence that was admitted in Luke’s testimony only repeated testimony that Griffith had given earlier. And the assistant prosecutor’s statements, even if improper, did not prejudicially affect Dodds’s substantial rights. The fifth assignment of error is without merit.

In the final assignment of error, Dodds asserts that his convictions were based on insufficient evidence and that his convictions were against the manifest weight of the

---

<sup>5</sup> *State v. Smith* (1984), 14 Ohio St.3d 13, 14, 470 N.E.2d 883.

<sup>6</sup> See *State v. Bradley* (1989), 42 Ohio St.3d 136, 142, 538 N.E.2d 373; *Strickland v. Washington* (1984), 466 U.S. 668, 687, 104 S.Ct. 2052.

<sup>7</sup> *Strickland*, supra, at 689.

evidence. When an appellant challenges the sufficiency of the evidence, we must determine whether the state presented adequate evidence on each element of the offense.<sup>8</sup> On the other hand, when reviewing whether a judgment is against the manifest weight of the evidence, we must determine whether the jury clearly lost its way and created a manifest miscarriage of justice.<sup>9</sup>

Here, we conclude that the state presented sufficient evidence of each of the elements of the offenses for which Dodds was convicted. Further, we conclude that the convictions were not against the manifest weight of the evidence. Although there was no physical evidence connecting Dodds to the shooting, the state presented ample circumstantial evidence of Dodds's involvement. The jury was in the best position to weigh the evidence. We cannot say that it lost its way in finding Dodds guilty of the offenses. The sixth assignment of error is not well taken.

Therefore, we affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HILDEBRANDT, P.J., SUNDERMANN and HENDON, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on March 3, 2010

per order of the Court \_\_\_\_\_.  
Presiding Judge

---

<sup>8</sup> See *State v. Thompson*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541.

<sup>9</sup> See *id.* at 387.